UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

2008 MAY 12 PM 3:26

'08 MJ 1477

UNITED STATES OF AMERICA, Plaintiff, v. Juan Jesus LIMON (1), Hugo MONTES-Martinez (2), Modesta Luisa MAGANA (3), Defendants.	Magistrate's Case No. ______ KNH COMPLAINT FOR VIOLATION OF Title 21, U.S.C., Section 841(a)(1) – Possession of Marijuana with Intent to Distribute; Title 18, U.S.C., Section 2 - Aiding and Abetting

The undersigned complainant being duly sworn states:

On or about May 8, 2008, within the Southern District of California, defendant Juan Jesus LIMON, Hugo MONTES-Martinez, and Modesta Luisa MAGANA did knowingly and intentionally possess, with intent to distribute, 100 kilograms and more, to wit: approximately 105.40 kilograms (231.89 pounds) of marijuana, a Schedule I Controlled Substance; in violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

And the complainant states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.

James A. Pokryfke
Special Agent
Drug Enforcement Administration

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 12th DAY OF MAY 2008.

THE HONORABLE CATHY A. BENCIVENGO
UNITED STATES MAGISTRATE JUDGE

STATEMENT OF FACTS

On May 8, 2008 Border Patrol Agents of the Campo Station Abatement Team (CSAT) were conducting anti-smuggling operations targeting the Shockey Truck Trail smuggling corridor. All CSAT agents were in civilian attire and operating unmarked Agency surveillance vehicles. Shockey Truck Trail, located approximately 13 miles east of the Tecate, California Port of Entry, is a notorious smuggling corridor for illegal aliens and narcotics in the Campo, California area and spans approximately six miles from California State Route 94 to the United States/Mexico border. Agents were scrutinizing traffic entering and leaving Shockey Truck Trail, as well as traffic entering and leaving the area via State Route 94.

I. SURVEILLANCE AND SEIZURE OF MARIJUANA

On May 8, 2008, at approximately 9:00 A.M., CSAT Border Patrol Agent P. Robinson was observing traffic entering and exiting Shockey Truck Trail at SR 94, when he observed a burgundy Nissan Maxima approach the intersection from the east along SR 94. Agent Robinson observed the burgundy Nissan slow and come to a stop in the westbound traffic lane at the intersection. The driver of the Nissan honked the horn three times and quickly made a left turn south onto Shockey Truck Trail. As the burgundy Nissan turned, Agent Robinson observed a second vehicle, a green Chevrolet Malibu (CA: 5YOB504), approach the intersection from the east on SR 94 and turn south onto Shockey truck Trail behind the burgundy Nissan. Both vehicles proceeded a short distance south and stopped. Agent Robinson observed a subject exit the passenger side of the burgundy Nissan and walk over to where the green Chevrolet was parked across Shockey Truck Trail. The passenger door of the green Chevrolet opened and a subject exited and walked over to the burgundy Nissan. Each subject got into the other vehicle and closed the doors. Agent Robinson observed as the burgundy Nissan proceeded south on Shockey Truck Trail, stopped briefly at a residence and returned north minutes later. The green Chevrolet pulled out onto Shockey Truck Trail and stopped in the northbound lane, and the burgundy Nissan pulled up next to it in the southbound lane a stopped. Agent Robinson observed that the windows were down and could hear that the occupants of the two vehicles were speaking to each other. Both vehicles then continued north to SR 94 and turned east. CSAT Supervisory Agent L. Miele observed both vehicles pass his position traveling east on SR 94 toward Boulevard, CA. Since Agent Robinson was able to observe both vehicles continuously, CSAT agents did not attempt to follow the vehicles, as they did not believe that the vehicles had loaded illegal aliens or contraband, although the stopping and honking along a known smuggling corridor, the tandem driving and the communication between the vehicles all strongly suggested that the occupants of the vehicles were very likely in the area for the purpose of smuggling illegal aliens or contraband. Agents decided to maintain surveillance of the Shockey Truck Trail area to see if the vehicles returned, and SBPA Miele contacted Border Patrol Agents from the East County Abatement Team (ECAT) and the Boulevard Station Abatement Team (BSAT) to assist.

At approximately 9:45 A.M., CSAT Agent M. Saclarides observed the green Chevrolet Malibu traveling west on SR 94 near Buckman Springs Road. The driver of the green Chevrolet pulled into the Cameron Corners strip mall and parked, and Agent Saclarides requested registration information through Border Patrol Dispatch on the vehicle's California license plate. Agent Saclarides advised SBPA Miele that Dispatch reported that the vehicle was registered to a Viviana MAGDALENA out of San Diego, California. Immediately recognizing the similarity of the name to a prior smuggling event, SBPA Miele inquired if the name was not Viviana MAGANA. Dispatch responded that the registered owner's name was, in fact, Viviana MAGANA, not MAGDALENA, prompting SBPA Miele to advise surveillance agents that the registered owner was a known registrant of a prior smuggling vehicle. At approximately 10:25 AM, the green Chevrolet Malibu was observed traveling back east toward Shockey Truck Trail on SR 94. Within minutes, Agent Robinson observed the green Chevrolet Malibu, driven by a female, turn south onto Shockey Truck Trail, proceed a short distance south and park in a dirt turnout. At that time the passenger door opened, a subject exited and walked to the front of the vehicle. Agent Robinson heard a male voice yelling loudly, but he was unable to discern what was being said. The passenger subsequently got back into the vehicle and it continued south on Shockey Truck Trail out of Agent Robinson's sight.

At approximately 10:40 AM, Agent Robinson informed surveillance units that the green Chevrolet Malibu was back northbound on Shockey Truck Trail toward the intersection. Agent Robinson subsequently advised that the green Chevrolet had two visible occupants and was turning east on SR 94. SBPA Miele set up approximately one mile east of Shockey Truck Trail on SR 94 to confirm that the green Chevrolet was, in fact, the same vehicle observed earlier. SBPA Miele clearly observed that the license plate matched as driver Juan Jesus LIMON passed him. SBPA Miele also clearly observed a female passenger sitting next to LIMON. No other subjects were visible. SBPA Miele pulled out behind LIMON and began following him east on SR 94 as backup units responded. Despite the fact that only two occupants were visible, the rear of the vehicle appeared lower than the first time SBPA Miele observed it pass him approximately two hours prior. Based on the totality of agents' knowledge of smuggling activity in the Shockey Truck Trail area, his recognition of the registered owner as associated with a prior smuggling event, the surveillance agents' observations of behavior characteristic of smuggling activity and the observation that the vehicle appeared heavier in the rear despite having only two visible occupants in the front, SBPA Miele believed that the vehicle was transporting concealed illegal aliens, and he requested a marked Border Patrol unit respond to assist with stopping the vehicle.

At approximately 10:55 AM, Border Patrol Agent E. Pepe of the Boulevard Border Patrol Station activated the emergency equipment on his marked Border Patrol vehicle, and LIMON yielded to the shoulder of eastbound SR 94 approximately 1/10 mile west of Ribbonwood Road. SBPA Miele and Agent Pepe approached the green Chevrolet Malibu, identifying themselves as Border Patrol Agents. SBPA Miele immediately observed a single male subject with a disheveled appearance slouched in the rear seat below window level. Suspecting that this subject was a smuggled alien attempting to conceal himself, SBPA Miele displayed his Agency issued badge and requested that LIMON turn off the vehicle. LIMON complied and exited the vehicle at SBPA Miele's direction. SBPA Miele asked LIMON if there were people in the trunk of the vehicle, and LIMON replied, "No." SBPA Miele then asked LIMON if he could look in the trunk, to which LIMON replied, "Yeah." SBPA Miele observed numerous gang-style tattoos on LIMON's arms and asked him if he was "OTNC," which refers to the Old Town National City Gang. LIMON initially responded, "I'm from National City," and subsequently stated that he was a former member of the OTNC gang. SBPA Miele and Station Abatement Team agents have in the past encountered or identified numerous members of this particular San Diego, California gang involved in alien smuggling in the Campo, California area. For officer safety, LIMON was handcuffed and placed in the rear of a Border Patrol vehicle, while SBPA Miele returned to the vehicle to execute a search of the trunk per the consent given by LIMON. Front seat passenger Modesta Luisa MAGANA and rear seat passenger Hugo MONTES-Martinez were removed from the vehicle and secured. Agents opened the trunk of the vehicle using the trunk release button near the steering wheel, and SBPA Miele and the other agents nearby immediately observed two large improvised backpacks and smelled a powerful odor of raw marijuana. Each backpack, one green nylon mesh and one red, white and blue checkered nylon, contained several individual packages wrapped in tan packing tape consistent with the packaging of smuggled narcotics. Agents advised Dispatch that the vehicle stop was good for smuggled narcotics, and MAGANA and MONTES were also arrested. LIMON, MAGANA and MONTES were transported to Campo Station for processing along with the green Chevrolet and the contraband.

During a search of the green Chevrolet Malibu, agents recovered a key ring with a Nissan key on the seat where MAGANA had been sitting. BSAT Agents A. Djokich and D. Chisum located the burgundy Nissan Maxima (CA: 3EMY796) in the parking lot of the Golden Acorn Casino, and CSAT agents responded with the key and confirmed that it started the vehicle. Agents subsequently transported the burgundy Nissan Maxima to Campo Station for processing. Also during the search of the green Chevrolet Malibu, agents located a Google Map satellite photo printout. The photo depicted the Shockey Truck Trail area and a route had been marked in blue ink pen leading south on Shockey Truck Trail to Calle Loreto, then breaking east to Las Montanas. An "X" was marked in the brush south of Las Montanas near a wooden gate in that area. Agents responded to the area depicted on the map, a known narcotics staging area, with Border Patrol Agent R. Waasdorp and his Agency K-9 unit, "AYLA." Agent Waasdorp and K-9 AYLA are trained and certified in the detection of the odors of marijuana, cocaine, heroin, methamphetamine and concealed humans. Within minutes of deploying to the brush line south of Las Montanas, K-9 AYLA led Agent Waasdorp to two more large improvised backpacks hidden under a bush. Agents observed that one of the backpacks was made of the same green nylon mesh as the one found in the trunk of the green Chevrolet, and both contained the same type and size of packages wrapped in tan packing tape. Both backpacks, reeking of raw marijuana, were transported to Campo Station for processing.

At Campo Station, agents removed nine packages from the two backpacks found in the green Chevrolet Malibu and ten packages from the two backpacks found in the brush. A sample of green leafy substance was removed from one of the packages and the substance field tested positive for marijuana. The nine bundles from the vehicle were weighed and inventoried for a total weight of 47.10 kilograms, or 103.61 pounds. The ten packages from the backpacks found in the brush were weighed and inventoried for a total weight of 58.30 kilograms, or 128.28 pounds. The total combined seizure weight was 105.40 kilograms, or 231.89 pounds. The San Diego Sector Border Intelligence Center was contacted and advised of the seizure. Drug Enforcement Administration agents responded to Campo Station on May 8, 2008 to take custody of LIMON, MAGANA and MONTES and the seized marijuana.

The green Chevrolet Malibu is registered to Viviana Magana, who is the sister of defendant Modesta Luisa MAGANA. In March 2007, CSAT agents arrested Viviana Magana in the green Chevrolet Malibu transporting approximately 110.45 kilograms, or 243 pounds, of marijuana.

The burgundy Nissan Maxima is registered to Queena Raphaela Limon, who is related to defendant Juan Jesus LIMON.

II. DEFENDANT LIMON'S POST-ARREST STATEMENT

On May 8, 2008, at approximately 3:23 P.M., Drug Enforcement Agents advised LIMON of his Miranda rights, and LIMON acknowledged he understood his rights and agreed to speak with agents without the presence of an attorney. LIMON admitted he was involved in the transportation of the marijuana seized earlier that day. LIMON said he received a call from MAGANA's stepfather "Beto" asking him to drive to the area of the Golden Acorn casino and follow MAGANA back to San

Diego because MAGANA would be transporting marijuana in her car. LIMON said "Beto" offered to pay him $1,000.00 to follow MAGANA back to San Diego. LIMON said he met MAGANA near SR 94 and Shockey Truck Trail, they tried to find the marijuana. Having no luck and running low on gas, LIMON drove to the Golden Acorn casino and parked his car. LIMON got into MAGANA's car and they drove back toward SR 94 near Shockey Truck Trail. DEA agents showed LIMON the Google Map found in the vehicle, and LIMON pointed to the "X" on the map where the marijuana was located. LIMON and MAGANA found the marijuana using the map, and several unknown Hispanic males attempted to load the marijuana into the trunk of the vehicle. LIMON said there was not enough room to fit all the of the marijuana and told DEA agents that the marijuana that did not fit in the vehicle should still be in the area. LIMON said that shortly after they picked up the marijuana, they were stopped by Border Patrol agents.

III. DEFENDANT MONTES' POST-ARREST STATEMENT

On May 8, 2008, at approximately 4:36 P.M., Border Patrol Agents advised MONTES of his Miranda rights in the Spanish language, and MONTES acknowledged he understood his rights and agreed to speak with agents without the presence of an attorney. MONTES said he received a call from a person he knew as "El Beto," and "El Beto" told MONTES he was to assist two other individuals in picking up a load of marijuana near Campo, California. MONTES said a man by the name of "Rolando" was going to pick him up in a white Ford Explorer and take him to Campo where MONTES would meet with the two other individuals. MONTES stated that he was instructed to give the individuals approximately $120.00 and assist them in picking up the marijuana due to the fact that the two other individuals were lost and could not find the marijuana.

MONTES said "Rolando" picking him up and took him to a gas station in Campo, California, which is near SR 94 and Buckman Springs Road. When MONTES arrived at the gas station he met LIMON and MAGANA who were waiting in a green 2003 Chevy. MONTES said he got into the vehicle and guided LIMON and MAGANA to the area where the marijuana was located, which is near SR 94 and Shockey Truck Trail. When they entered Shockey Truck Trail, they headed approximately one mile and made a right onto a dirt road. They traveled on the dirt road for a few hundred yards and stopped near a broken down vehicle. MONTES said that two unknown persons came out of the brush and mentioned MODESTA's name. The two unknown persons loaded the marijuana into the green Chevy. MONTES said that once the marijuana was loaded they drove back along the dirt road toward Shockey Truck Trail and SR 94.

MONTES stated that there was another vehicle at the Golden Acorn Casino, which he was supposed to fill up with gas and drive it back to San Diego.

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I, Special Agent James A. Pokryfke, declare under penalty and perjury that the foregoing is true and correct to the best of my knowledge.

5/12/2008

James A. Pokryfke
Special Agent
Drug Enforcement Administration